

APPENDICES

## Appendix A

### Statutes Involved:

26 U. S. C. 4741-4776

#### 4741. Imposition of tax

(a) Rate.—There shall be imposed upon all transfers of marihuana which are required by section 4742 to be carried out in pursuance of written order forms taxes at the following rates:

(1) Transfers to special taxpayers.—Upon each transfer to any person who has paid the special tax and registered under sections 4751 to 4753, inclusive, \$1 per ounce of marihuana or fraction thereof.

(2) Transfers to others.—Upon each transfer to any person who has not paid the special tax and registered under sections 4751 to 4753, inclusive, \$100 per ounce of marihuana or fraction thereof.

(b) By whom paid.—Such tax shall be paid by the transferee at the time of securing each order form and shall be in addition to the price of such form. Such transferee shall be liable for the tax imposed by this section but in the event that the transfer is made in violation of section 4742 without an order form and without payment of the transfer tax imposed by this section, the transferor shall also be liable for such tax. Aug. 16, 1954, c. 736, 68A Stat. 560.

#### 4742. Order forms

(a) General requirement.—It shall be unlawful for any person, whether or not required to pay a special tax and register under sections 4751 to 4753, inclusive, to transfer marihuana, except in pursuance of a written order of the

person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary or his delegate.

(b) **Exceptions.**—Subject to such regulations as the Secretary or his delegate may prescribe, nothing contained in this section shall apply—

(1) **Professional practice.**—To a transfer of marihuana to a patient by a physician, dentist, veterinary surgeon, or other practitioner registered under section 4753, in the course of his professional practice only: *Provided*, That such physician, dentist, veterinary surgeon, or other practitioner shall keep a record of all such marihuana transferred, showing the amount transferred and the name and address of the patient to whom such marihuana is transferred, and such record shall be kept for a period of 2 years from the date of the transfer of such marihuana, and subject to inspection as provided in section 4773.

(2) **Prescriptions.**—To a transfer of marihuana, made in good faith by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, veterinary surgeon, or other practitioner registered under section 4753: *Provided*, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, veterinary surgeon, or other practitioner who issues the same: *Provided further*, That such dealer shall preserve such prescription for a period of 2 years from the day on which such prescription is filled, so as to be readily accessible for inspection by the officers, employees, and officials mentioned in section 4773.

(3) **Exportation.**—To the sale, exportation, shipment, or delivery of marihuana by any person within the United States, any Territory, the District of Columbia, or any of the insular possessions of the United

States, to any person in any foreign country regulating the entry of marihuana, if such sale, shipment, or delivery of marihuana is made in accordance with such regulations for importation into such foreign country as are prescribed by such foreign country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

(4) Government and state officials.—To a transfer of marihuana to any officer or employee of the United States Government or of any State, Territorial, District, county, or municipal or insular government lawfully engaged in making purchases thereof for the Department of Defense, the Public Health Service, and for Government, State, Territorial, District, county, or municipal or insular hospitals or prisons.

(5) Certain seeds.—To a transfer of any seeds of the plant *Cannabis sativa* L. to any person registered under section 4753.

(e) Supply.—The Secretary or his delegate shall cause suitable forms to be prepared for the purposes mentioned in this section and shall cause them to be distributed to each internal revenue district for sale. The price at which such forms shall be sold shall be fixed by the Secretary or his delegate, but shall not exceed 2 cents each. Whenever any such forms are sold, the Secretary or his delegate shall cause the date of sale, the name and address of the proposed vendor, the name and address of the purchaser, and the amount of marihuana ordered to be plainly written or stamped thereon before delivering the same.

(d) Preservation.—Each such order form sold by the Secretary or his delegate shall be prepared to include an original and two copies, any one of which shall be admissible in evidence as an original. The original and one copy shall be given to the purchaser thereof. The original shall in turn be given by the purchaser thereof to any per-

son who shall, in pursuance thereof, transfer marihuana to him and shall be preserved by such person for a period of 2 years so as to be readily accessible for inspection by an officer or employee mentioned in section 4773. The copy given to the purchaser shall be retained by the purchaser and preserved for a period of 2 years so as to be readily accessible to inspection by any officer or employee mentioned in section 4773. The second copy shall be preserved in the records of the internal revenue district.

(e) Exemption of certain transfers to millers.—Nothing in this section shall apply to a transfer of the plant *Cannabis sativa L.* or any parts thereof from any person registered under section 4753 to a person who is also registered under section 4753 as a taxpayer required to pay the tax imposed by paragraph (6) of section 4751. Aug. 16, 1954, c. 736, 68A Stat. 560.

#### §4743. Affixing of Stamps (omitted)

#### §4744. Unlawful possession

(a) Persons in general.—It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by section 4741(a)—

(1) to acquire or otherwise obtain any marihuana without having paid such tax, or

(2) to transport or conceal, or in any manner facilitate the transportation or concealment of, any marihuana so acquired or obtained.

Proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the Secretary or his delegate, to produce the order form required by section 4742 to be retained by him shall be presumptive evidence of guilt under this subsection and of liability for the tax imposed by section 4741(a).

(b) Government and state officials.—No liability shall be imposed by virtue of this section upon any duly authorized officer of the Treasury Department engaged in the enforcement of this part, or upon any duly authorized officer of any State, or Territory, or of any political subdivision thereof, or the District of Columbia, or of any insular possession of the United States, who shall be engaged in the enforcement of any law or municipal ordinance dealing with the production, sale, prescribing, dispensing, dealing in, or distributing of marihuana. Aug. 16, 1954, c. 786, 68A Stat. 562; July 18, 1956, c. 629, Title I, §101, 70 Stat. 567.

#### §4745. Forfeitures

(a) Ownership by violators.—Any marihuana which may be seized by the United States Government from any person or persons charged with any violation of this part shall upon conviction of the person or persons from whom seized be confiscated by and forfeited to the United States.

(b) Unknown ownership.—Any marihuana seized or coming into the possession of the United States in the enforcement of this part, the owner or owners of which are unknown, shall be confiscated by and forfeited to the United States.

(c) Disposal.—The Secretary or his delegate is hereby directed to destroy any marihuana confiscated by and forfeited to the United States under this section or to deliver such marihuana to any department, bureau, or other agency of the United States Government, upon proper application therefor, under such regulations as may be prescribed by the Secretary or his delegate.

(d) Other laws applicable.—Except as inconsistent with the provisions of this part, all the provisions of internal revenue laws relating to searches, seizures, and forfeitures are extended to include marihuana. Aug. 16, 1954, c. 786, 68A Stat. 562.

**§4746. Cross references (omitted)****§4751. Imposition of tax**

Every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, prescribes, administers, or gives away marihuana shall before engaging in any of the above-mentioned activities, and thereafter on or before July 1 of each year, pay the following special taxes respectively:

- (1) Importers, manufacturers, and compounders.—Importers, manufacturers, and compounders of marihuana, \$24 a year;
- (2) Producers.—Producers of marihuana (except those included within paragraph (4)), \$1 a year, or fraction thereof, during which they engage in such activity;
- (3) Physicians, dentists, veterinary surgeons, and other practitioners.—Physicians, dentists, veterinary surgeons, and other practitioners who distribute, dispense, give away, administer, or prescribe marihuana to patients upon whom they in the course of their professional practice are in attendance, \$1 a year, or fraction thereof, during which they engage in any of such activities;
- (4) Persons engaged in research, instruction, or analysis.—Any person not registered as an importer, manufacturer, producer, or compounder who obtains and uses marihuana in a laboratory for the purpose of research, instruction, or analysis, or who produces marihuana for any such purpose, \$1 a year, or fraction thereof, during which he engages in such activities;
- (5) Persons not otherwise taxed.—Any person who is not a physician, dentist, veterinary surgeon, or other practitioner and who deals in, dispenses, or gives away marihuana, \$3 a year: *Provided*, That any person who

has registered and paid the special tax as an importer, manufacturer, compounder, or producer, as required by paragraphs (1) and (2), may deal in, dispense, or give away marihuana imported, manufactured, compounded, or produced by him without further payment of the tax imposed by this section;

(6) **Millers.**—Any person who at a mill manufactures or produces from the plant *Cannabis sativa L.* any fiber or fiber products, \$1 a year, or fraction thereof, during which he engages in such activities.

Aug. 16, 1954, c. 736, 68A Stat. 563.

#### 4752. Computation and liability for tax

(a) **Computation of tax.**—Where a tax under paragraph (1) or (5) of section 4751 is payable on July 1 of any year it shall be computed for 1 year; where any such tax is payable on any other day it shall be computed proportionately from the first day of the month in which the liability for the tax accrued to the following July 1.

(b) **Liability in case of activities in more than one place.**—In the event that any person subject to a tax imposed by section 4751 engages in any of the activities enumerated in such section at more than one place, such person shall pay the tax with respect to each such place.

(c) **Liability in case of more than one activity by same person at same time.**—Except as otherwise provided, whenever more than one of the activities enumerated in section 4751 is carried on by the same person at the same time, such person shall pay the tax for each such activity, according to the respective rates prescribed. Aug. 16, 1954, c. 736, 68A Stat. 563.

#### 4753. Registration

(a) **In general.**—Any person subject to the tax imposed by section 4751 shall, upon payment of such tax, register

his name or style and his place or places of business with the official in charge of the internal revenue district in which such place or places of business are located.

(b) Special requirements for millers.—The Secretary or his delegate shall not permit the registration of any person under this section as a person required to pay the tax imposed by paragraph (6) of section 4751, unless in the opinion of the Secretary or his delegate such person (or if a corporation, each officer thereof) is a person of good moral character and unless in the opinion of the Secretary or his delegate such person is a person of suitable financial standing, intends to engage in good faith in the business of manufacturing or producing fiber or fiber products from the plant *Cannabis sativa L.* on a commercial basis, and is not seeking registration under this section for the purpose of facilitating the unlawful diversion of marihuana. Any person who is registered under this section and has paid the tax imposed by paragraph (6) of section 4751 shall afford officers and employees designated by the Secretary or his delegate ready access at all times to any part of the premises of the mill or other premises of such person and the right to inspect any and all books, papers, records, or documents connected with the activities of such person in dealing in, manufacturing, and processing *Cannabis sativa L.* and fiber or fiber products thereof, and the handling of marihuana. The Secretary or his delegate may cancel or may refuse to renew, after notice and opportunity for hearing, the registration of any such person if he finds that such person has not complied or is not complying with the requirements of this subsection, or if he finds that grounds exist which would justify the refusal to permit the original registration of such person under this section. Aug. 16, 1954, c. 736, 68A Stat. 564.

#### §4754. Returns

(a) Registrants.—Any person who shall be registered under the provisions of section 4753 with the Secretary or

his delegate shall, whenever required to do so by the Secretary or his delegate, render a true and correct statement or return, verified by affidavits, setting forth the quantity of marihuana received or harvested by him during such period immediately preceding the demand of the Secretary or his delegate, not exceeding 3 months, as the Secretary or his delegate may fix and determine. If such person is not solely a producer, he shall set forth in such statement or return the names of the persons from whom said marihuana was received, the quantity in each instance received from such persons, and the date when received.

(b) Cross references.—(omitted)

4755. Unlawful acts in case of failure to register and pay special tax

(a) Trafficking.—

(1) Liability.—It shall be unlawful for any person required to register and pay the special tax under the provisions of sections 4751 to 4753, inclusive, to import, manufacture, produce, compound, sell, deal in, dispense, distribute, prescribe, administer, or give away marihuana without having so registered and paid such tax.

(2) Enforcement of liability.—In any suit or proceeding to enforce the liability imposed by this section or sections 4751 to 4753, inclusive, if proof is made that marihuana was at any time growing upon land under the control of the defendant, such proof shall be presumptive evidence that at such time the defendant was a producer and liable under this section as well as under sections 4751 to 4753, inclusive.

(b) Transportation.—Except as otherwise provided in this subsection, it shall be unlawful for any person to send, ship, carry, transport, or deliver any marihuana within any Territory, the District of Columbia, or any in-

sular possession of the United States, or from any State, Territory, the District of Columbia, or any insular possession of the United States into any other State, Territory, the District of Columbia, or insular possession of the United States. Nothing contained in this subsection shall apply—

- (1) to any person who shall have registered and paid the special tax as required by sections 4751 to 4753, inclusive;
- (2) to any common carrier engaged in transporting marihuana;
- (3) to any employee acting within the scope of his employment for any person who shall have registered and paid the special tax as required by sections 4751 to 4753, inclusive, or to any contract carrier or other agent acting within the scope of his agency for such registered person;
- (4) to any person who shall deliver marihuana which has been prescribed or dispensed by a physician, dentist, veterinary surgeon, or other practitioner registered under section 4753 and employed to prescribe for the particular patient receiving such marihuana;
- (5) to any person carrying marihuana which has been obtained by the person from a registered dealer in pursuance of a written prescription referred to in section 4742(b) (2), issued for legitimate medical uses by a physician, dentist, veterinary surgeon, or other practitioner registered under section 4753, if the bottle or other container in which such marihuana is carried bears the name and registry number of the druggist, serial number of prescription, name and address of the patient, and name, address, and registry number of the person issuing such prescription;

(6) to any person carrying marihuana which has been obtained by the person as a patient from a registered physician, dentist, or other practitioner in the course of his professional practice if such marihuana is dispensed to the patient for legitimate medical purposes; or

(7) to any United States, State, county, municipal, District, Territorial, or insular officer or official acting within the scope of his official duties.

Aug. 16, 1954, c. 736, 68A Stat. 565; July 18, 1956, c. 629, Title I, §102, 70 Stat. 567.

¶4756. Other laws applicable (omitted)

¶4757. Cross references (omitted)

¶4761. Definitions

When used in this part—

(1) Person.—The term "person" means an individual, a partnership, trust, association, company, or corporation, and includes an officer or employee of a trust, association, company, or corporation, or a member or employee of a partnership, who, as such officer, employee, or member, is under a duty to perform any act in respect of which any violation of this part occurs.

(2) Marihuana.—The term "marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative,

mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(3) Producer.—The term "producer" means any person who (A) plants, cultivates, or in any way facilitates the natural growth of marihuana; or (B) harvests and transfers or makes use of marihuana.

(4) Transfer or transferred.—The term "transfer" or "transferred" means any type of disposition resulting in a change of possession, but shall not include a transfer to a common carrier for the purpose of transporting marihuana.

Aug. 16, 1954, c. 736, 68A Stat. 565.

§4762. Administration In Insular Possessions (omitted)

§4771. Stamps (omitted)

§4772. Exemption from tax and registration

(a) Employees.—No employee of any person who has registered and paid a special tax as required in sections 4721 to 4726, inclusive, or sections 4751 to 4757, inclusive, acting within the scope of his employment shall be required to register and pay such special taxes.

(b) Government and state officials.—Officials of the United States, Territorial, District of Columbia, or insular possessions, State or municipal governments, who in the exercise of their official duties engage in any of the businesses described in section 4741 or activities enumerated in sections 4751 and 4752, shall not be required to register, nor pay special tax, but their right to this exemption shall be evidenced in such manner as the Secretary or his delegate may by regulations prescribe.

(c) Cross references.—(omitted)

#### 4773. Inspection of returns, order forms, and prescriptions

The duplicate order forms and the prescriptions, including the written record of oral prescriptions, required to be preserved under the provisions of section 4705(c) (2) and (e), and the order forms and copies thereof and the prescriptions and records required to be preserved under the provisions of section 4742, in addition to the statements or returns filed in the office of the official in charge of the internal revenue district under the provisions of sections 4732(b) or 4754, shall be open to inspection by officers and employees of the Treasury Department duly authorized for that purpose, and such officials of any State or Territory, or of any organized municipality therein, or of the District of Columbia, or any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the production of marihuana or regulating the sale, prescribing, dispensing, dealing in, or distribution of narcotic drugs or marihuana. The Secretary or his delegate is authorized to furnish, upon written request, certified copies of any of the said statements or returns filed in the office of any official in charge of an internal revenue district to any of such officials of any State or Territory or organized municipality therein, or the District of Columbia, or any insular possession of the United States as shall be entitled to inspect the said statements or returns filed in the office of the official in charge of the internal revenue district, upon the payment of a fee of \$1 for each 100 words or fraction thereof in the copy or copies so requested. Aug. 16, 1954, c. 736, 68A Stat. 567; Aug. 31, 1954, c. 1147, §9, 68 Stat. 1004.

#### 4774. Territorial extent of law (omitted)

#### 4775. List of special taxpayers

The Secretary or any officer or employee designated by him is authorized to furnish upon written request, to any

person, a certified copy of the names of any or all persons who may be listed in the respective internal revenue districts as special taxpayers under the provisions of sections 4721 to 4726, inclusive, section 4702(a), section 4751, or section 4752, upon payment of a fee of \$1 for each 100 names or fraction thereof in the copy so requested. Aug. 16, 1954, c. 736, 68A Stat. 568.

§4776. Cross references (omitted)

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**Appendix B**

APPENDIX B

**TREASURY DEPARTMENT**  
**UNITED STATES INTERNAL REVENUE**

ORIGINAL  
Value Two U.S. Cents

ORDER FORM FOR MARIJUANA, OR COMPOUNDS,  
MANUFACTURES, SALTS, DERIVATIVES, MIXTURES,  
OR PREPARATIONS UNDER THE MARIJUANA TAX ACT OF 1937.

MARIJUANA ORDER  
FORM NUMBER

A4877

DATE ISSUED BY  
COLLECTOR:

19

TO: \_\_\_\_\_

Sir:

Application having been presented and transfer tax in the amount of \$ \_\_\_\_\_ having been paid, as evidenced by transfer tax stamps affixed to the original hereof in accordance with the provisions of the Marijuana Tax Act of 1937 and regulations issued thereunder, you are authorized, in so far as the provisions of that Act and the regulations issued thereunder are concerned, to transfer to \_\_\_\_\_ to be delivered to him in person or consigned to him at \_\_\_\_\_, a quantity of marijuana not to exceed \_\_\_\_\_ ounces in the form of the following products:

ITEM	NAME OF PRODUCT OR PREPARATION	QUANTITY
1		
2		
3		
4		

AFFIX

STAMPS

HERE

Signed: \_\_\_\_\_ Collector, \_\_\_\_\_

By \_\_\_\_\_

NOTE: Not valid to authorize a transfer of marijuana unless signed by the collector and the full amount of transfer stamps indicated above are affixed to the original copy.

**Appendix C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN  
67-CR-45

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UNITED STATES OF AMERICA,

*Plaintiff,*

—v.—

DONALD SIMON,

*Defendant.*

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OPINION AND ORDER

The government has filed a petition for reconsideration of an opinion and order entered herein on June 30, 1969, granting defendant's motion to dismiss both counts of an indictment charging him with violations of the Marihuana Tax Act, 26 U. S. C. §4741 et seq.

Count I of the indictment charged that defendant transferred a quantity of marihuana not pursuant to a written order on a form issued in blank for that purpose by the Secretary of the Treasury or his delegate, in violation of 26 U. S. C. §4742(a). Count II of the indictment charged that defendant was a transferee of and transported and facilitated the transfer of a quantity of marihuana without having paid the tax imposed by 26 U. S. C. §4741(a), in violation of 26 U. S. C. §4744(a). Defendant's motion to dismiss both counts of the indictment was granted on the ground that the timely assertion of his privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States is a complete defense to the charges in the indictment.

With respect to Count II of the indictment which charges a failure to pay the transfer tax in violation of section 4744(a), the outcome is controlled by the decisions of the United States Supreme Court in *Leary v. United States*, 37 U. S. L. W. 4397 (U. S., May 19, 1969), and *United States v. Covington*, 37 U. S. L. W. 4412 (U. S., May 19, 1969). The government contends, however, that with respect to the privilege against self-incrimination, a prosecution for transferring marihuana not pursuant to a written order form, in violation of section 4742(a), is distinguishable from a prosecution for failure to pay the transfer tax, in violation of section 4744(a). The government asserts that the obtaining of a written order form by the transferee is at most an indication that the transferor intends to transfer marihuana illegally; that the transferor has until the time of the actual transfer an option not to transfer marihuana illegally; and that, therefore, the transferor's Fifth Amendment rights are not violated by the written order form requirement. In addition, the government directs the court's attention to two recent decisions. In *United States v. Buie*, 407 F. 2d 905 (2d Cir. 1969), cert. granted 37 U. S. L. W. 3493 (U. S., June 23, 1963), a timely assertion of the privilege against self-incrimination was held not to constitute a defense to a prosecution for violation of section 4742(a). In *United States v. Lawler*, — F. 2d — (7th Cir., July 10, 1969), a timely assertion of the privilege against self-incrimination was held not to constitute a defense to a prosecution for transferring narcotics not pursuant to a written order form in violation of section 4705(a).

The government's contention that a prosecution for violation of section 4742(a) is distinguishable from a prosecution for violation of 4744(a) because at most the written order form is an indication that the transferor intends to transfer marihuana illegally, which intention may be revoked prior to the actual time of transfer, is not persuasive. Section 4741(b) provides that the transfer tax shall

be paid by the transferee at the time he secures the written order form. It is the written order form which elicits and preserves incriminating information. Therefore, the transferee is in no different position than the transferor with respect to having a possibility of revoking an intention to acquire marihuana illegally. Mere possession of marihuana constitutes a crime in every state (see statutory authority collected in footnote 2 of the opinion and order entered herein on June 30, 1969). It appears that the transferee has an even longer period of time than the transferor to revoke his intention to possess marihuana since the transferor must necessarily acquire possession of the marihuana to be transferred prior to the transfer and the transferee's acquisition of the marihuana.

In *United States v. Buie*, *supra*, on which the government relies, the court relied on *United States v. Minor*, 398 F. 2d 511 (2d Cir. 1968) cert. granted 37 U. S. L. W. 3458 (U. S., June 2, 1969), which held that the privilege against self-incrimination was not available as a defense to a prosecution under section 4705(a) for the transfer of narcotics not pursuant to a written order form. In the opinion and order entered herein on June 30, 1969, I concluded that, with respect to the privilege against self-incrimination, a prosecution for violation of section 4742 (a) is distinguishable from a prosecution for a violation of 4705(a). Section 4742(c) provides that at the time the form is sold, the name and address of the proposed vendor, as well as the date of sale, the name and address of the purchaser and the amount of marihuana ordered must be made to appear on the written order form. Section 4705, however, does not require the name and address of the transferor to be placed on the order form. 26 C. F. R. §151.185 dealing with this section requires only that the size and number of packages and the date of sale must be made to appear on the written order form. Although 26 C. F. R. §151.201 requires the transferor to write his name

on the written order form and forward a triplicate copy to the narcotic district supervisor, this is not done until after the transaction is completed, and, therefore, the transferor can comply with the literal requirements of section 4705(a) without providing incriminating information.

With respect to *United States v. Buie, supra*, it should initially be observed that this decision was rendered prior to the Supreme Court's decisions in *Leary v. United States, supra*, and *United States v. Covington, supra*. Moreover, at least one pillar of *Buie* appears to have been undermined by *Leary* and *Covington*. In *Buie* the court concluded that section 4742(a) was not aimed at a class "inherently suspect of criminal activities", *Albertson v. Subversive Activities Control Board*, 382 U. S. 70, 79 (1965). In *Leary*, however, the Supreme Court concluded that under the Marihuana Tax statutory scheme persons required to pay the transfer tax constitute a class "inherently suspect of criminal activities". Section 4741(a) imposes the transfer tax on all transfers of marihuana which are required by section 4742 to be carried out pursuant to a written order form. Consequently all transactions for which a transfer tax is required are also transactions for which a written order form is required. Accordingly, if transferees required to pay the transfer tax are members of a class "inherently suspect of criminal activity", so also are transferors who are required to transfer marihuana pursuant to a written order form members of such a class.

In *Buie* the court concluded that since it is the transferee who places the incriminating information on the order form rather than the transferor, the transferor "cannot benefit from the privilege allegedly available to the [transferee]", 407 F. 2d at 907 (quoting from *United States v. Minor, supra* at 513). The court further concluded that the case of the transferor and the written order form requirement of section 4742(a) "is conceptually no

different from a prosecution based on incriminatory admissions voluntarily made to a police informant". *Id.* (citing *Hoffa v. United States*, 385 U. S. 293, 304, 87 S. Ct. 408, 17 L. Ed. 2d 374 (1966)).

I am unable to agree with the reasoning of the court in *Buie*. The court asserted that if the transferor were required to write his name on the written order form or if the transferor and transferee were each required to write his name on the written order form, the transferor's privilege against self-incrimination would be violated. I am unable to distinguish those situations from the dilemma posed for the transferor by section 4742(a). The transferor is placed in the position of either requiring that the transferee enter information on the form which will incriminate the transferor or violating section 4742(a). The section thus requires the transferor to see to it that incriminating information is provided to the authorities. It is irrelevant whose hand actually places the information on the form. The privilege against self-incrimination could be easily eroded if it could be circumvented by requiring a person to provide incriminating information to the government by means of a third party. It is noteworthy in this respect that the transfer tax requirement involved in *Leary* and *Covington* does not require the transferee to provide incriminating information directly to state and local authorities by whom he is in danger of being prosecuted. It merely requires him to furnish information to federal authorities which may incriminate him as to a state or local offense and requires the federal authorities to furnish this information to state and local authorities upon request.

Finally, the analogy suggested in *Buie* to incriminatory admissions voluntarily made to a police informant is unpersuasive. In the section 4742(a) situation, the government requires that the information be provided; it is the element of voluntariness which is lacking. In *Hoffa*, upon which the *Buie* court relied in making its comment, the

Supreme Court emphasized the voluntary character of the statements made.

*United States v. Lawler, supra*, relied upon by the government, followed *United States v. Minor, supra*, in holding that the privilege against self-incrimination is not available as a defense to a prosecution for transfer of narcotics not pursuant to a written order form in violation of section 4705(a). I conclude that *United States v. Lawler, supra*, is distinguishable from the present case for the same reasons that I have concluded that *United States v. Minor, supra*, is distinguishable. Nothing in the *Lawler* opinion dictates a different result here. In fact a careful reading of that opinion appears to support the view that the privilege against self-incrimination is available as a defense to a prosecution for violation of section 4742(a). In reaching its conclusion with respect to section 4705(a), the court in *Lawler* explained:

"As pointed out [in *United States v. Minor, supra*], the statute only prohibits the sale of narcotics to a purchaser who has not obtained an order form from the Treasury Department. Despite the serious hazard of self-incrimination to which the purchaser may be exposed in complying with such a requirement (see *Leary v. United States*, — U. S. — —), a seller in *Lawler*'s position may not complain of a theoretical violation of the purchaser's rights. Defendant has not brought to the court's attention any regulations which would require the seller of narcotics to participate in or insure his own incrimination through the order form requirement, but to the extent that any regulation might jeopardize the constitutionality of section 4705(a) the regulation would have to give way in order that the statute may be saved. Cf. *Leary v. United States*, — U. S. — —." *United States v. Lawler, supra*, advance sheet opinion at page 6. (Emphasis added.)

I conclude that because of the requirement of section 4742(c) that at the time the written order form is obtained the name and address of the proposed vendor must be made to appear on the form, a copy of which is to be preserved in the records of the internal revenue district, section 4742(a) requires the transferor to "insure his own incrimination".

I adhere to the determination in the opinion and order entered herein on June 30, 1969, that the timely assertion of the privilege against self-incrimination constitutes a complete defense to a prosecution for violation of section 4742(a) as well as 4744(a).

For the reasons set forth above the petition for reconsideration is hereby denied.

Entered this 16th day of July, 1969.

By the Court:

JAMES E. DOYLE  
*District Judge*